

Via email: CBconsultations@canada.ca



September 29, 2017

The Honourable Minister Mélanie Joly
Minister of Canadian Heritage
Department of Canadian Heritage
15 Eddy Street
Gatineau, Quebec
K1A 0M5

The Honourable Minister Navdeep Bains
Minister of Innovation, Science
and Economic Development Canada
C.D. Howe Building
235 Queen Street
Ottawa, Ontario
K1A 0H5

Mr. Claude Majeau
Vice-Chairman and Chief Executive Officer
Copyright Board of Canada
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Dear Minister Joly, Dear Minister Bains, Dear M. Majeau:

Re: A Consultation on Options for Reform to the Copyright the Board of Canada

A. Introduction

1. The Directors Guild of Canada (“DGC”) is writing regarding the above-noted consultation relating to the Copyright Board of Canada (“Board”), initiated on 9 August 2017 by the Department of Canadian Heritage (“PCH”), the Department of Innovation, Science and Economic Development Canada (“ISED”) and the Board. The DGC is a national labour organization that represents key creative and logistical personnel in the film, television and digital media industries. It was created in 1962 as an association of Canada’s film and television directors. Today the DGC has 4,800 members drawn from

47 different craft and occupational categories, covering all areas of direction, production, editing and design of screen-based content in Canada.

2. The DGC also administers a copyright collective entitled the *Directors Rights Collective of Canada* (“DRCC”). The DRCC is a non-profit organization, established in 1998 with a mandate to collect and distribute royalties derived from foreign broadcasters to which Directors of film and television productions are entitled to royalties under copyright legislation in Europe and elsewhere.
3. **The DGC is very pleased that the PCH, ISED and the Board have initiated this public proceeding. The Copyright regime in Canada and the work of the Board are vital to the Canadian economy, Canadian cultural industries generally, and to the Canadian screen-based production sector specifically.**

B. Scope of this Review

4. The DGC appreciates that the focus of this public proceeding is a review of legislation and regulations that relate to the Board’s decision-making processes, to ensure more timely and transparent decisions in this fast-paced digital era. In this regard, the Discussion Paper¹ prepared for this review states the following:

“...the Department of Innovation, Science and Economic Development (“ISED”), the Department of Canadian Heritage (“PCH”) and the Board have jointly launched this consultation to seek views on a range of potential changes to the legislative and regulatory framework of the Board’s powers and procedures as well as the tariff-setting regimes more generally. The aim of this consultation is to develop a package of reforms that would minimize the amount of time taken by those processes while maintaining this Board’s ability to fulfill its purpose and render sound decisions in accordance with the principles of procedural fairness and the reasonable expectations of stakeholders and the public.” (Discussion Paper, p.2)

5. The DGC also notes the related News Release dated 9 August 2017, which states the following regarding this public proceeding:

“Getting the Copyright Board system right will enable creators to get paid properly and on time. It will create new business opportunities in the current fast-moving economic environment. It will also mean more money for

¹ PCH, ISED, Board, “Discussion Paper: Consultation on Options for reform to the Copyright Board of Canada,” 9 August 2017.

creators and users and less money being spent on legal fees.”² [Emphasis added]

6. We also note the following statements by Minister Bains and Minister Joly in the above-noted Press Release:

“The Copyright Board of Canada plays a critical role in our copyright regime. In order to thrive in the digital economy, we need to create a more efficient and effective tariff-setting process to facilitate innovation and business growth. A modern Copyright Board will better support both creators and users of copyrighted content by providing them with an efficient, transparent, stable and predictable regulatory environment.” – The Honourable Navdeep Bains, Minister of Innovation, Science and Economic Development.

“The Government of Canada recognizes the invaluable contribution of Canadian creators to our economy, and is committed to ensuring fair remuneration for artists. Through these consultations, we seek concrete improvements to the Copyright Board that enable creators to efficiently access new, diverse and stable streams of revenue...” - The Honourable Melanie Joly, Minister of Canadian Heritage.

7. The DGC fully supports this proceeding and its stated goals. As a national advocate for Canadian content creators, we are of the view that screen-based content creators should receive appropriate and timely compensation for their creative works.

C. Importance of Strong Copyright Regime for Content Creators

8. As stated, a strong copyright regime for Canada is vital for content creators, particularly in this digital era. As cinematographic works are created and disseminated across digital platforms in Canada and around the world, it is all the more critical that Canadian creators be recognized under the Canadian copyright regime, and properly compensated for their creative efforts. This will ensure that our creators are well positioned to continue to innovate, take risks, be bold in their creativity, and create original screen-based content that appeals to audiences in Canada and around the globe.
9. The DGC very much looks forward to the Government of Canada’s review of the *Copyright Act* in the coming weeks, and will be pleased to submit its comments within that legislative review. **Indeed, among our key recommendations in that regard is the need for a Director of a cinematographic work to be acknowledged as an author of these works.**

² ISED, Press release, “Consultations launched on reforming Copyright Board of Canada,” 9 August 2017.

This has been a longstanding DGC policy. We were very pleased to hear the comments of the Honourable Mélanie Joly, Minister of Canadian Heritage, during her address on 28 September 2017, announcing the Government of Canada's *Creative Canada* vision. In particular, the Minister stated the following regarding intellectual property:

"Investing in creators also means ensuring they are fairly compensated and can protect and make the most of their intellectual property. We will soon launch a parliamentary review of the Copyright Act and I will work hard to ensure that review is focused on creators. Similarly, we will reform the Copyright Board to ensure that we support cultural content, pay our artists faster and reduce costs for all parties. Together, all of these initiatives will support creators as they turn great ideas into great content."¹³ [Emphasis added]

D. Potential Options for Reform of the Board

10. As set out in the Discussion Paper prepared for this public proceeding, the focus of this review is the process and procedures related to matters before the Board. Of primary concern to the DGC is that:
 - a) Board decisions be released in a timely manner;
 - b) Board proceedings remain efficient and effective in this digital era; and
 - c) Canadian creators are compensated expeditiously and appropriately for their work.

11. With this in mind, the DGC has reviewed the Discussion Paper, which sets out a number of recommendations for reform and improvements of the Board. In particular, the DGC supports the following recommendations:
 - i) Explicitly require or authorize the Board to advance proceedings expeditiously (Discussion Paper, Option #1).
 - ii) Create new deadlines or shorten existing deadlines in respect of Board proceedings to help expedite proceedings (Discussion Paper, Option #2).
 - iii) Implement case management of Board proceedings. Under this model, a representative of the Board could be designated to supervise the progress of a given Board proceeding (Discussion Paper, Option #3).

³ The Honourable Mélanie Joly, Minister of Canadian Heritage, "Launch of Creative Canada," Notes for an address to the Economic Club of Canada, 28 September 2017.

- iv) Require collective societies to include additional explanations with proposed tariffs. This could serve to provide greater clarity earlier in a proceeding and hence help with the efficiency and timeliness of a matter before the Board (Discussion Paper, Option #5).
 - v) Change the time requirements for the filing of proposed tariffs to allow a longer minimum effective period for proposed tariffs, for say up to three years, which should reduce the Board's annual workload and hence improve its efficacy (Discussion Paper, Option #7).
 - vi) Require proposed tariffs to be filed longer in advance of their effective dates. Currently, the *Copyright Act* requires that a proposed tariff be filed on or before the March 31 immediately prior to the expiry of a tariff sought to be renewed. The Board, therefore, has less than 12 months to complete all necessary steps and approve the tariff. To ensure that the Board has more time to consider a proposed tariff, a greater amount of time should be required for the filing of materials by parties related to a proposed tariff (Discussion Paper, Option #8).
 - vii) Codify and clarify specific Board procedures through regulation. In order to improve the timeliness and clarity of the Board's decision-making processes, it would be helpful that a regulatory codification be in place of the Board's procedures (Discussion Paper, Option #10).
 - viii) Stipulate a mandate for the Board in the *Copyright Act*. The decision-making obligations of the Board are currently set out in the Board's legislated duties and in the principles of administrative law. Stating a mandate for the Board in the *Copyright Act* could provide clarity and guidance to the Board itself in relation to its proceedings. It could also provide greater clarity to parties who appear before the Board and the courts who review the Board's decisions, as stated in the Discussion Paper (Discussion Paper, Option #11).
12. In our respectful view, these recommendations in particular will ensure a more effective and efficient copyright regime for Canada and Canadian creators.

E. Conclusion

13. Canadian creators play an important role in Canadian society and in our digital economy. They help bind us as a nation, they help express our cultural narrative on screen, and they contribute to the strength of our free and democratic society. Canadian creators also make important contributions to the Canadian economy and to shining a bright light on Canadian creative works on the world stage. To ensure that Canadian creators have the ability

to properly exploit their talent and share their creative works with audiences in Canada and around the globe, a strong copyright regime and an effective Copyright Board are essential.

14. The DGC very much appreciates the opportunity to file this submission. We would be pleased to elaborate on our comments should the Ministers wish to receive more details about our submission.

All of which is respectfully submitted.

A handwritten signature in black ink, appearing to read "B. Baker". The signature is fluid and cursive, with a large initial "B" and a long, sweeping underline.

Brian Baker
National Executive Director